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NO. 84-439

In the Supreme Court of the United States

OCTOBER TERM, 1984

LESLIE DANIEL CALDWELL, JR.,
Petitioner
versus
SOLUS OCEAN SYSTEMS, INC.,
Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Of Counsel:
KIERR, GAINSBURGH,
BENJAMIN, FALLON
AND LEWIS
New Orleans,
Louisiana

SAMUEL C. GAINSBURGH
1718 First National
Bank of Commerce Bldg.
New Orleans, LA 70112
(504) 522-2304
ATTORNEY FOR PETITIONER

QUESTION PRESENTED FOR REVIEW

Should a vessel time charterer, having wrongfully withheld earned wages from a seaman it has employed, be granted immunity from the penalties prescribed in Title 46 U.S.C., section 596, upon the happenstance that the employer was neither "owner" nor "master" of the chartered vessel?

LIST OF ALL PARTIES TO THE PROCEEDING

Petitioner: Leslie Daniel Caldwell, Jr.

Respondent: Solus Ocean Systems, Inc.

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Respondent

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

TO THE HONORABLE THE SUPREME COURT OF THE UNITED STATES AND THE JUSTICES THEREOF:

Petitioner, Leslie Daniel Caldwell, Jr., prays that a writ of certiorari

issue to review the opinion and judgment of the United States Court of Appeals for the Fifth Circuit in this cause, specifically, its opinion of June 25, 1984.

OPINIONS BELOW

The opinion of the United States Court of Appeals, Fifth Circuit, Caldwell v. Solus Ocean Systems, Inc., is reported at 734 F.2d 1121 (5 Cir. 1984) and is reprinted as Appendix A hereof.

The oral reasons of the United States District Court for the Eastern District of Louisiana, and the judgment entered thereon, Caldwell v. Solus Ocean Systems, Inc., No. 82-4496 "J," are unreported and are printed as Appendix B hereof.

JURISDICTION

The jurisdiction of this Honorable Court is invoked under Title 28, United States Code, sections 1331 and 1333; and under Title 46, United States Code, section 596.

his discharge on account of wages a sum equal to one-third part of the balance due him. Every master or owner who refuses or neglects to make payment in the manner hereinbefore mentioned without sufficient cause shall pay to the seaman a sum equal to two days' pay for each and every day during which payment is delayed beyond the respective periods, which sum shall be recoverable as wages in any claim made before the court...

STATEMENT OF THE CASE

Leslie Daniel Caldwell (Petitioner) was employed by Solus Ocean Systems, Inc. (Solus), from January 1 to January 27, 1982, as a seaman aboard the M/V STENA PROTECTOR, a diving vessel time-chartered by Solus for a mission in the North Sea.

Following his discharge from the vessel on January 27, 1982, and despite numerous requests for payment, Petitioner was not paid all of his earned wages until December 8, 1982, after suit was filed--a delay of 315 days. Solus admits that it did not authorize or direct even partial payment of Petitioner's earned wages of $150 per day until sometime between February 24 and March 2, 1982.

Petitioner filed suit in the United States District Court for the Eastern District of Louisiana, claiming unpaid wages and penalties from his employer, Solus. Jurisdiction was invoked pursuant to Title 28 United States Code, sections 1331 and 1333 and Title 46, United States Code, section 596. The parties each filed summary judgment motions quoad the

penalties; the District Court denied Petitioner's motion and granted the motion of Solus on the technicality that, although Solus was Petitioner's employer and allegedly withheld his earned wages without sufficient cause, since Solus was neither the owner nor the master of the vessel on which Petitioner served, Solus could not be held liable for penalties under 46 United States Code, section 596. The United States Court of Appeals for the Fifth Circuit affirmed the judgment against Petitioner. It is from this affirmance that Petitioner seeks redress in this Honorable Court.

ARGUMENT FOR GRANTING CERTIORARI

THE OPINION OF WHICH PETITIONER SEEKS REVIEW, BY ACCORDING UNDUE DEFERENCE TO STATUTORY LITERALISM, INCORRECTLY RESOLVES AN IMPORTANT ISSUE OF FEDERAL LAW THAT HAS NOT YET BEEN, BUT SHOULD BE, SETTLED BY THIS HONORABLE COURT. RESPONDENT TIME-CHARTERED A VESSEL AND EMPLOYED PETITIONER AS A MEMBER OF HER CREW--AS A SEAMAN. WITHOUT SUFFICIENT CAUSE, RESPONDENT WITHHELD A SIGNIFICANT PORTION OF PETITIONER'S EARNED WAGES AND PETITIONER SOUGHT THE PENALTIES PROVIDED IN TITLE 46, UNITED STATES CODE, SECTION 596. HOWEVER, THE COURT OF APPEALS FOR THE FIFTH CIRCUIT DENIED PETITIONER THE RIGHT TO RECOVER SUCH PENALTIES, SOLELY BECAUSE RESPONDENT WAS THE TIME CHARTERER, RATHER THAN THE "OWNER" OR "MASTER," OF THE VESSEL. THIS HONORABLE COURT SHOULD REVIEW THE APPELLATE DECISION SINCE IT PATENTLY FRUSTRATES THE CLEAR INTENT OF THE STATUTE.

An analysis of the history of Title 46, United States Code, section 596, reveals an unwavering willingness of the courts to look beyond the statute's bare

verbiage, in order to effectuate the unmistakable intent of Congress to protect seamen from employers who wrongfully delay payment of the seaman's earned wages.

For instance, literally the statute does not provide an in rem remedy for the aggrieved seaman. The statute speaks only of the "master or owner" of the vessel being liable for penalties. Yet, a century of jurisprudence has held that seamen were intended by Congress to have a right to proceed in rem against their vessels for their penalties. Covert v. British Brig Wexford, 3 Fed.577, 579 (S.D.N.Y.1880); Gerber v. Spencer, 278 Fed.886, 889 (9 Cir.1922); The Nika, 287 Fed.717, 718 (W.D. Wash.1922); The Great Canton, 299 Fed.953, 955 (E.D.N.Y.1924).

Likewise, although the statute literally provides the aggrieved seaman no remedy against a bareboat charterer who wrongfully withholds earned wages from a seaman in its employ, the courts have consistently displayed a willingness to impose penalties on bareboat charterer-employers, in order to protect the "wards of admiralty" who suffer greatly when their employers

withhold earned wages without sufficient cause. The Chester, 25 F.2d 908 (D.Md.1928) illustrates this point:

> It is well established that money payable under section 4529 of the Revised Statutes [presently codified at 46 USC § 596] is payable essentially as wages, and not penalties . . . further, it is axiomatic that seamen have a lien upon the vessel for their wages. Thus it follows that they also have a lien for any and all sums payable under section 4529, and not merely a right to enforce a personal claim against the master or owner . . . this being true, let us consider the exact facts in the present case. The vessel was in the hands of a charterer, with authority, as we have seen, to cause wage liens to be imposed upon her, the charter party to the contrary notwithstanding. He thus, being the source of such liens, must likewise be the source of so-called penalties;

that is, for everything payable under the statute. By virtue of established principles, previously discussed, there was not sufficient cause for the charterer's refusal to pay.

The words of the statute, 'master or owner,' must refer to the person who is primarily responsible to the seamen for their wages--that is, the person who employs them; and in the present case that person is the charterer or his master . . . if this were not so--that is, if these words referred only to the true owner of the vessel or his master, regardless of the source of employment--there could never be any penalties imposed in situations such as the present one, where the charterer (or his master) engages the seamen, because (1) the charterer (or his master) would not be embraced within the terms of the statute;

> and (2) neither the true owner nor his master has played any part in the employment. Therefore the seamen, through no fault of their own, would be entirely cut off from the remedy which the statute intended to give them.

25 F.2d at 910-911.

The Ninth Circuit has also made clear its intent to allow seamen to recover penalties from other than the "owner or master" of the vessel. In Aird v. Weyerhaeuser S.S. Co., 169 F.2d 606 (9 Cir.1948), the court opined:

> The law imposes the liability for wages upon the owner, however, only if he is the operating owner whose agent the master is. If the owner of the vessel has given entire possession and control of it to another by virtue of a demised charter or otherwise and the master is, therefore, the agent of the charterer and not of the owner, the person thus put in possession and control of the vessel becomes special owner for

> the voyage and assumes all the responsibilities of owner with respect, inter alia, to the wages of the seamen and their wrongful discharge. Such a person is frequently described as 'owner pro hoc vice' which is merely a convenient expression to indicate that he stands in the place of the owner for the voyage or service contemplated and bears the owner's responsibilities, even though the latter remains the legal owner of the vessel.

169 F.2d at 609-610.

Earlier, in Everett v. United States, 284 Fed.203, 205 (9 Cir.1922), cert. den. 261 U.S. 615, the court said: ". . . where the general owner places the ship in the exclusive possession and control of another, such other becomes the owner pro hoc vice with respect to liability for wages and other expenses."

The United States Court of Appeals for the First Circuit has clearly held that bareboat charterers are liable for penalty wages, notwithstanding the fact

that Title 46 United States Code, section 596, speaks only in terms of the "owner or master" of the vessel. Mavromatis v. United Greek Shipowners Corp., 179 F.2d 310, 315 (1st Cir.1950). In Mavromatis, the United States chartered the liberty ship NIKI to the Greek government during World War II. The NIKI was operated by the defendant, a Delaware Corporation. The Court ruled:

> [I]t is our opinion also that libelants were entitled to recover the penalty prescribed in 46 U.S.C.A. §596, on account of these unlawful deductions for compulsory savings . . . respondent has failed to show 'sufficient cause' for its neglect to make payments of wages to libelants in full in accordance with the requirements of the seamen's act . . . the penalty provided by §596 is therefore applicable. . ..

179 F.2d at 315-316.

The evolution of American jurisprudence interpreting 46 United States Code, section 596, thus displays a clear

judicial willingness to effectuate the intent of Congress, rather than to be bound by its words. The current state of the law is to permit seamen whose wages have been withheld wrongfully to recover, not only from the owner or master of the vessel, but also from the vessel itself and from a bareboat charterer thereof. It would create a curious and unwarranted hiatus in judicial solicitude for the welfare of seamen if this Honorable Court approbates the decision of the Court of Appeals, granting total immunity from penalties to time charterers who wrongfully withhold wages from seamen in their employ.

For more than half a century, this Court has recognized, as the purpose of this statute, the protection of seamen from the "harsh consequences of arbitrary and unscrupulous actions of their employers, to which, as a class, they are peculiarly exposed, and by inducing prompt payment through a coercive effect." (Emphasis added.) Collie v. Ferguson, 281 U.S. 52, 55 (1930). That purpose was recently reiterated by the Court in Griffin v. Oceanic Contractors, Inc., 454 U.S. 1121 (1982).

That the statute does not literally mention employers is no more than a reflection of its time. In 1790, vessel owners and masters were the actual employers of all seamen. Such is not the case today. Under modern methods of vessel operation, particularly of special-purpose vessels, their owners and masters frequently are not the employers of at least some of the crew members. Indeed, employers of seamen are not even time charterers; in contemporary offshore drilling operations, oil exploration companies customarily contract for seamen labor. See, e.g., Spinks v. Chevron Oil Co., 507 F.2d 216 (5 Cir.1975). It is well established that employers' liabilities to their employees are not dependent upon owning or operating the vessel. Bertrand v. International Mooring and Marine, Inc., 700 F.2d 240 (5 Cir. 1983); Guidry v. S.La.Contractors, Inc., 614 F.2d 447 (5 Cir.1980).

The principles of germane statutes should embrace new factual situations attributable to technological advances. Petroleum Helicoptors, Inc. v. Pool Co. of Texas, 684 F.2d 1102 (5 Cir. 1982). It is

only proper that courts take cognizance of changes in the actual operations of the shipping industry. Cox v. Roth, 348 U.S. 207 (1954). In order to effectuate the clear purpose of the penalty-wage statute, this Court should hold Solus--Caldwell's actual employer and the party contractually responsible for his earned wages--legally responsible for penalties accrued during the period Solus wrongfully withheld Caldwell's earned wages.

The Court has long recognized the rights of seamen, and even quasi-seamen, to look to their employers for the protection accorded them by statutes enacted specifically for the seaman's welfare.. International Stevedoring Company v. Haverty, 272 U.S. 50 (1926). In Haverty, decided prior to enactment of the Longshoremen's and Harborworkers' Compensation Act, the Court allowed a longshoreman employed by an independent stevedore to recover against his employer under the Jones Act, despite the fact that the statute refers only to seamen, and longshoremen are not seamen for most purposes. The court said:

> We cannot believe that Congress willingly would have allowed the protection to men engaged upon the same maritime duties to vary with the accident of thus being employed by a stevedore rather than by the ship.

Haverty, 272 U.S. at 52. Thus, the fortuitous circumstance of employment would not suffice to deny seamen, or even quasi-seamen, their maritime rights and remedies.

Section 596 of Title 46, United States Code, is to be construed liberally in favor of the seaman. Arguelles v. U.S. Bulk Carriers, Inc., 408 F.2d 1065 (4 Cir.1969), aff'd, 400 U.S. 351 (1971). The literal interpretation urged by Solus does not comport with the liberal construction embraced by the courts in other analogous circumstances.

In its opinion of which review is sought, the Court of Appeals for the Fifth Circuit quite properly relied for guidance upon this Court's decision in Griffin v. Oceanic Contractors, Inc., 458 U.S. 564 (1982). The Court of Appeals erred, however, in its conclusion that this

is not one of those "rare cases [in which] the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters,. . ." This Honorable Court, and others whose opinions are cited herein, have held consistently that the primary purpose of the instant statute is to protect and preserve the sanctity of seamen's earned wages. In the event of unjustified non-payment, to exempt from statutory penalties the very party contractually bound to pay the wages is the quintescence of "statutory frustration."

CONCLUSION

For the aforesaid reasons, Petitioner's application for a writ should be granted and, after due proceedings had, the decision of the Court of Appeals for the Fifth Circuit should be reversed, with instructions to remand the matter for trial

to the United States District Court for the Eastern District of Louisiana.

Respectfully submitted,

Samuel C. Gainsburgh
1718 First N.B.C. Building
New Orleans, Louisiana 70112
(504) 522-2304
ATTORNEY FOR THE PETITIONER

Of Counsel:
KIERR, GAINSBURGH, BENJAMIN,
FALLON & LEWIS
New Orleans, Louisiana

CERTIFICATE OF SERVICE

I, the undersigned member of the Bar of this Honorable Court, hereby certify that three copies of the Petition herein have been served upon Respondent's counsel, David L. McComb, Esq., by delivering the same to his offices at 1500 First N.B.C. Building, New Orleans, Louisiana, this _____ day of September, 1984.

_____

Samuel C. Gainsburgh

APPENDIX A

Leslie Daniel CALDWELL, Jr.,
Plaintiff-Appellant,

v.

SOLUS OCEAN SYSTEMS, INC.,
Defendant-Appellee
No. 83-3456

United States Court of Appeals,
Fifth Circuit.
June 25, 1984.

Discharged seaman who had been employed on diving vessel chartered by his employer brought action against employer to recover penalty wages. The United States District Court for the Eastern District of Louisiana, Patrick E. Carr, J., granted summary judgment for employer, and seaman appealed. The Court of Appeals, Randall, Circuit Judge, held that statute providing for payment of penalty wages by any "master or owner" of vessel who failed to timely pay seaman was not applicable to employer

of seaman who was neither master nor owner of vessel on which seaman was employed.

Affirmed.

Appeal from the United States District Court for the Eastern District of Louisiana.

Before GEE, RANDALL and JOHNSON, Circuit Judges.

RANDALL, Circuit Judge:

This case involves an action under 46 U.S.C. §596 for the recovery of penalty wages by the plaintiff-appellant, Leslie Daniel Caldwell. The district court granted summary judgment for the defendant-appellee, Solus Ocean Systems. We agree with the district court that because Solus was neither the owner nor the master of the vessel upon which Caldwell was stationed, Caldwell has no cause of action against

Solus under section 596. Thus, summary judgment was proper and we affirm.

I.

Caldwell was employed by Solus[1] as a life-support technician on a diving vessel that was chartered by Solus. He was paid $150 a day. Following his discharge after several weeks of employment, Caldwell was not paid all of the wages he had earned and that were due him. He brought this lawsuit against Solus pursuant to 46 U.S.C. §596, which provides, in pertinent part:

> The master or owner of any vessel making coasting voyages shall pay to every seaman his wages within two days after the termination of the agreement under which he was shipped, or at the time such seaman is discharged, whichever first happens . . . Every master or owner who refuses or neglects to make payment in the manner hereinbefore

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1. Caldwell apparently was also employed for some part of his stint by A.G. Percon. Percon is not a party to this action.

> mentioned without sufficient cause shall pay to the seaman a sum equal to two days' pay for each and every day during which payment is delayed beyond the respective periods, which sum shall be recoverable as wages in any claim made before the court . . .

(Emphasis added.) Because it is undisputed that Solus was not the master or the owner of the vessel on which Caldwell was employed, but was Caldwell's employer, the sole issue before us is whether section 596 extends to "employers" as well as those parties enumerated in the statute. We hold that it does not.

II.

In United States v. M/V BIG SAM, 693 F.2d 451 (5th Cir.1982) (on rehearing), we set forth the fundamental principles of statutory construction in the context of the Federal Water Pollution Control Act, 33 U.S.C. §1321. There, we held that, although our interpretation of several provisions of the Act resulted in what some might consider an illogical inconsistency

between the provisions, such a construction was mandated by the plain language of the statute itself:

> However inconsistent we may think this disparate treatment, however much we may be of the view that we could tidy up the statute and make of it what to us seems to be more sense, it is simply not part of our function as judges to rewrite, in the guise of statutory construction, unambiguous statutory language in order to cure what to us seems to be statutory deficiencies.

693 F.2d at 455. In the case at hand, the asserted statutory deficiency arises because the party paying the seaman is often not the owner or master of the vessel, but the seaman's employer. Thus, Caldwell asserts, precluding a section 596 action against the employer dilutes the rights of the historically protected class of seamen. Caldwell asserts that under Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 102 S.Ct. 3245, 73 L.Ed.2d 973 (1982), where the enforcement of a statute's plain

language contravenes Congress' intent in enacting the statute, the courts are not bound by "literalism."

In Griffin, the Court held that section 596 is to be construed in accordance with its "straightforward terms:"

> Our task is to give effect to the will of Congress, and where its will has been expressed in reasonably plain terms, "that language must ordinarily be regarded as conclusive." Consumer Product Safety Comm'n v. GTE Sylvania, Inc., 447 U.S. 102, 108, 100 S.Ct. 2051, 2056, 64 L.Ed.2d 766 (1980).
>
> * * * * * * * * * * * *
>
> Nevertheless, in rare cases the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters, and those intentions must be controlling. We have reserved "some 'scope for adopting a restricted rather than a literal or usual meaning of its words

> where acceptance of that meaning . . . would thwart the obvious purpose of the statute.'" Commissioner v. Brown, 380 U.S. 563, 571, 85 S.Ct. 1162, 1166, 14 L.Ed.2d 75 (1965) (quoting Helvering v. Hammel, 311 U.S. 504, 510-11, 61 S.Ct. 368, 371, 85 L.Ed. 303 (1941)).

102 S.Ct. at 3250. Caldwell urges that this is such a "rare case." We are not persuaded. The Griffin Court was concerned with those exceptional instances in which the demonstrated Congressional intent underlying a given statute is clearly frustrated or defeated by a literal interpretation of the statute's language. We are not here presented with such a situation. As the Supreme Court noted in Griffin, there is no indication in the legislative history of section 596 that Congress intended to "do anything other than

what the Act's enacted language plainly demonstates." 102 S.Ct. at 3251. Although the Griffin Court did not address the issue before us,[2] we think that its rationale is plainly applicable. The exclusion of employers from the coverage of section 596 does not produce such an absurd result that we are persuaded to deviate from the plain and unambiguous statutory language.[3]

Caldwell also argues that we should interpret section 596 to provide employer

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2. The precise issue before the Court in Griffin was whether the wage penalty period may be limited by the court, or whether imposition of the penalty was mandatory for each day that payment was withheld in violation of the statute. The Court held that the plain language of section 596 mandated the latter interpretation.

3. We note that neither party has cited, nor have we discovered, a single case imposing penalty wage liability under section 596 on any party other than an owner or a master.

liability because when Congress originally enacted the statute, owners and masters were the only employers of seamen; hence, we are urged to infer that Congress actually intended to include employers by its language. Caldwell asserts that the principles underlying the statute should be extended to modern-day developments in contractual division of labor arrangements. We are not persuaded. If Congress intends that seamen be permitted to proceed against their non-owner, non-master employer, it is within Congress' province, not this court's, to make this clear. Until it does, we must assume "that the legislative purpose is expressed by the ordinary meaning of the words used." Richards v. United States, 369 U.S. 1, 9, 82 S.Ct. 585, 591, 7 L.Ed.2d 492 (1962). See also American Tobacco Co. v. Patterson, 456 U.S. 63, 102 S.Ct. 1534, 71 L.Ed.2d 748 (1982).

The judgment of the district court is AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

* * * * * * * * * * * * * * * *

LESLIE DANIEL CALDWELL, JR. * CIVIL ACTION

VERSUS * NO. 82-4496

SOLUS OCEAN SYSTEMS, INC. * SECTION "J"

* * * * * * * * * * * * * * * *

Motion heard on July 6, 1983, before the Honorable Patrick E. Carr, presiding.

APPEARANCES:

FOR THE PLAINTIFF:

KIERR, GAINSBURGH, BENJAMIN, FALLON & LEWIS

(By: Barbara G. Danos, Esq.)

1718 First National Bank of Commerce Building

New Orleans, Louisiana 70112

FOR THE DEFENDANT:

CHAFFE, McCALL, PHILLIPS, TOLER & SARPY

(BY: David L. McComb, Esq.)

1500 First NBC Building

New Orleans, Louisiana 70112

BY: ARLENE MOVAHED, O.C.R.

P R O C E E D I N G S

THE COURT: I really don't need to hear oral argument on it. I have made up my mind what I am going to do.

I view it maybe as not being exactly in my view equitable under the circumstances particularly in view of the seaman's right of recovery but again the statute appears clear.

I don't see how any ordinary usage of the words master or owner that could construe it any other way. Even though I may not like the result that comes I simply am unwilling to put any construction that would not certainly be strained in order to give the coverage to this man.

MR. McCOMB: I think that is certainly the result dictated by the Supreme Court. I couldn't agree more.

THE COURT: I am sure you agree with it and I am sure you don't.

MS. DANOS: Yes, sir; that's correct.

THE COURT: I thought about it a good deal and there isn't any question. There wasn't a great deal of question in

my mind last time except I didn't like the result that was obtained by the construction but I view that as being in the responsibility of the Congress not the Court because it is clear.

MS. DANOS: May I inquire did Your Honor have the benefit of my supplemental memorandum?

THE COURT: Yes, I sure did. Even though I might like to agree with you I simply can't. I am going to have to grant the motion.

MS. DANOS: Thank you, Your Honor.

THE COURT: You may convince the Fifth Circuit otherwise. I thought about it a good deal and I think it is so clear that it would be judicial legislation for me to extend it.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

LESLIE DANIEL CALDWELL, JR.	CIVIL ACTION
VERSUS	NO. 82-4496
SOLUS OCEAN SYSTEMS, INC.	SECTION "J"

J U D G M E N T

The Court having previously granted the motion of defendant for summary judgment,

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of defendant, Solus Ocean Systems, Inc., against plaintiff, Leslie Daniel Caldwell, Jr., dismissing said plaintiff's suit, with costs.

Dated at New Orleans, Louisiana, this 6th day of July, 1983.

S/Patrick E. Carr
UNITED STATES DISTRICT JUDGE